IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 521 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMABEN WD/O PUNJABHAI NARANBHAI BHANGI

Versus

DIVISIONAL DIRECTOR

Appearance:

1. Civil Revision Application No. 521 of 1998

MR PRADYUMAN B BHATT for Petitioner No. 1

MR PRAVIN GONDALIYA for Petitioners No. 1,2-6

MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 31/01/2002

C.A.V.JUDGEMENT

1. This C.R.A. is preferred against the order of the M.A.C.T.(Aux.) Banaskantha at Palanpur on 2.2.98

rejecting the application for interim relief u/s 140 of the M.V.Act, 1988.

2. The only question which arises for my consideration is "whether the Motor Accident Claims Tribunal is right in allowing the application of No Fault Liability under Sec. 140 of the M.V.Act bearing no. 380/96 and disallowing the application bearing no. 381/96 arising out of the same accident under Sec. 140 of the M.V.Act ?

3. It is the case of the applicants that one Punjabhai Naranbhai Bhangi aged about 42 years of village Parsing, Taluka Santalpur, District Banaskantha with his son Balabhai @ Jayantibhai Punjabhai Bhangi aged about 18 years was travelling in S.T.bus bearing no. GJ.1-Z.61 dashed with the truck bearing no. PB-10-9641 on 5.8.96 in the morning at about 7 O'clock on Santalpur Varahi highway near 1 km. from village Bamroli within the jurisdiction of Varahi police station. In the said accident the driver of the S.T.bus and the above mentioned two persons lost their lives. Two claim petitions were filed bearing M.A.C.P.no. 669/96 and 670/96 by the heirs of deceased Punjabhai Bhangi and deceased Balabhai Bhangi respectively. In both the petitions, applications no. 380/96 and 381/96 for compensation under Sec. 140 of the M.V.Act were filed out of which application no. 380/96 was allowed by the learned tribunal and the other application no. 381/96 was rejected which gave rise to this C.R.A.

4. In the order of the learned tribunal below application 381/96, it is observed that when the accident is proved to have taken place between by the concerned bus and the truck, prima facie the appellants have to prove by producing evidence that they are entitled to the interim compensation under Sec. 140 of the Act can be granted. Looking to the panchanama and other material on record, the Tribunal came to the conclusion that the accident took place on account of the rash and negligent driving of driver of truck no. PB-10-9641 and in no case the accident has taken place on account of S.T.Bus no. GJ.1-Z.61 and accordingly rejected the prayer for interim compensation.

5. In support of his arguments, the applicants relied on the decision in case of New India Assurance Co. Ltd. Ahmedabad V/s Mithakhan Dinakhan Notiyar and Ors. reported in 1995(2) G.L.R. 1111 wherein this court in para 6 on page 1114 has observed as under :

" There is no manner of doubt that Sec. 140 of the Act is beneficial and social welfare piece of legislation. It is well settled that in construing social welfare legislation, the Courts should adopt a beneficial rule of construction and in any event, that construction should be preferred which fulfils the policy of legislation. The construction to be adopted on a statute should be such so as to achieve the purpose for which it is enacted and in favour of those in whose interest the Act has been passed. The liability under this section is made indefeasible, peremptory and total. It has been put beyond dispute that insurer is clearly liable under Sec. 140 of the Act in view of the provisions contained in Secs. 145 & 147 of the Act."

6. Mr.Zhaveri L.A. for the respondent-insurance company submitted that revision cannot lie and claimant has to invoke writ jurisdiction of the High Court for redressal of grievance against the no fault liability. In support of his submissiona, Mr.Zhaveri has relied on case of Dimple V/s Lajjaram and others reported in 1992 ACJ 967 (M.P.). In this case, the M.P.High Court Gwalior Bench has come to the conclusion that the claims Tribunal is not a Court subordinate to the High Court and in terms of Sec. 115, revision is not maintainable and that M.V.Act is a special law and the claims tribunal is a creature of the Act and not of C.P.C. Accordingly revision being not contemplated under the Act, the jurisdiction of the High Court cannot assume unauthorisedly and the claimant may invoke writ jurisdiction of the High Court for redressal of grievance against the impugned order. Except the aforesaid contention as per the judgment in case of Dimple (supra), Mr.Zhaveri has not argued on any other point.

7. Against the aforesaid submissions, Mr.Pravin Gondaliya L.A. for the petitioners relied on the case of Jayaben Jivrajbhai V/s Karsanbhai K Rathod & Ors. reported in 1994(2) G.L.R. 1409 and submitted that the Tribunal is a Civil Court subordinate to the High Court and the orders passed by such Tribunal, if other conditions of Sec. 115 of the Civil Procedure Code are satisfied could be revised by this High Court under that Section. In this case, this court has, relying on the judgment of S.C. in case of AIR 1979 SC 855 and in case reported in 1983 ACJ 123, this court came to the conclusion that :

"Their Lordships of the Supreme Court that the Motor Accident Claims Tribunal constituted under the Motor Vehicles Act is a Civil Court for the purpose of Sec. 25 of the C.P.C. Following the aforesaid two judgment of the Supreme Court, the Full bench of the Patna High Court took the view that a Motor Accidents Claim Tribunal is a Civil Court and that the district Judges who function as Claims Tribunal are not only within the administrative control of the High Court, but are also subordinate to it under Sec. 115 of the C.P.C. This proposition enunciated by the Full bench of the Patna High Court on the basis of the two Supreme Court judgments referred to hereinabove as also the judgment of the learned single judge of this Hon'ble High Court in Shardaben case (supra) make it abundantly clear that a Motor Accident Claims Tribunal is a Civil Court subordinate to the High Court and the orders passed by such a Tribunal, if other conditions of Xec. 115 of the C.P.C. are satisfied, could be revised by this High Court under that section."

In view of the aforesaid circumstances, I am of the opinion that the M.A.C.T.(Aux.) at Palanpur has erred in rejecting the application under Sec. 140 of the M.V.Act and thereby not used the jurisdiction vested in it and thereby violated the principle of law and this court is bound to interfere with the said order. One more point in favour of the present applicants is that in cognate matter being application no. 380/96 is allowed by the same trial Judge. Therefore, in view of the facts and circumstances of the case, I allow this Civil Revision Application and quash and set aside the order passed by the M.A.C.T.(Aux.) Banaskantha at Palanpur. I further order the opponent G.S.R.T.C. to deposit the amount of interim relief being Rs.50,000/with interest as per the order passed in application no. 380/96 within 8 weeks from the date of receipt of writ. Accordingly this Civil Revision Application is allowed. Rule is made absolute. No order as to cost.

(SHARAD D DAVE, J)

srilatha